

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

BEFORE THE CHIEF PROCUREMENT
OFFICER FOR GOODS AND SERVICES

In the Matter of Protest of:)

Case No. 2008-140

Sanctuary Pointe, LLC)

Materials Management Office)

RFP No. 08-S7648)

Design, Construct, Finance and)

Operate Facilities on Lake Hartwell)

For South Carolina Department of)

Parks, Recreation & Tourism)

Approval of Protest Settlement

Posted: January 9, 2009

The above-referenced parties have requested the approval of the Chief Procurement Officer to the terms of the settlement of a protest filed by Sanctuary Pointe, LLC. For the reasons set forth herein, the settlement is approved.

FACTS

On February 5, 2008, a Request for Proposals (RFP) was published by the Materials Management Office on behalf of the South Carolina Department of Parks, Recreation and Tourism (SCPRT). The RFP sought proposals to design, construct, finance and operate facilities on Lake Hartwell to meet the public recreational demand at reasonable user fees. The solicitation was designed to culminate with a sublease for the specified property on Lake Hartwell with SCPRT. The subject property is currently under lease by the SCPRT from the United States Army Corps of Engineers (USACE). The current lease was anticipated to be extended for an additional term of up to fifty years depending upon the facilities proposed. In addition to meeting the needs of the State of South Carolina, the successful offeror would also be required to meet stringent USACE standards with respect to all alterations and changes to the real property involved.

Originally the opening of proposals was scheduled for June 12, 2008 but the date for opening was extended to June 25, 2008 by amendment to the solicitation. The Award was scheduled to be made on November 12, 2008. Only Sanctuary Pointe, LLC, submitted a proposal in response to the solicitation. Since only one proposal was received the reviews were completed prior to the time originally allowed and on October 6, 2008, with the support of the SCPRT, the Materials Management Office published its decision. The result was that there would be no award and that the solicitation would be cancelled. Sanctuary Pointe, LLC, timely protested the same.

DETERMINATION OF NON-RESPONSIBILITY

The decision by SCPRT and MMO to cancel the solicitation and make no award is understood to have arisen because the only offeror, Sanctuary Pointe, LLC, provided insufficient financial assurance that its proposed facilities and plans would come to fruition. While Sanctuary Pointe had apparently offered a plan which might be esthetically acceptable, there was no assurance that the solution offered could or would be financially viable. In particular, the proposal did not contain financial information acceptable to the Procurement Manager or SCPRT that any of the projected construction or other amenities would ever be realized.

The financial aspect of the proposed development was intended to be of utmost importance. It was stated in the solicitation that the State would not be financially responsible for any of the proposed services or amenities or any other financial aspect of the project. In fact, as noted by MMO, the solicitation clearly required all offerors to be financially responsible and capable of fully sustaining any proposed project. Because of the alleged failure of Sanctuary Pointe, LLC, to offer any financial security or guarantees that their proposed solution would be financially sustained and viable, the Procurement Manager, with the concurrence of the SCPRT, made the decision that the offering corporation was not financially responsible to undertake the solution it proposed. Therefore, a determination of non-responsibility of Sanctuary Pointe was issued on October 6, 2008.

SETTLEMENT

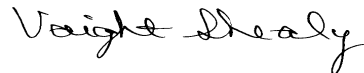
It is understood that Sanctuary Pointe claims that its offer, while not providing any financial security or continuing financial responsibility, was in accordance with the general standards of the industry for such proposals and that additional time would be required to acquire the financial information the State was seeking. SCPRT nevertheless contends that it must have the financial assurances that any project, if undertaken, will remain viable for the life of its lease term. SCPRT has made its intention very clear that any offeror(s) must be capable of not only proposing a solution which can meet the public recreational requirements but will ensure financial responsibility from the date of award until the end of any contracted lease term.

Sanctuary Pointe, LLC, therefore proposed that additional time be allowed to secure the type of financial support for the project that the State was requiring. Sanctuary Pointe represented that if the previous decisions regarding non-responsibility and “no award” were withdrawn, it would seek to secure the necessary evidence of financial security required by the solicitation within approximately six months. SCPRT and MMO determined that because only one offer had been submitted, despite the

fact that the solicitation was open for nearly six months, and no other offerors of the same scope made known their interest; because the solicitation and its requirements were particularly demanding; and, because the offer of Sanctuary Pointe was, in several important respects, responsive to the solicitation of SCPRT, an appropriate resolution of the controversy would be to permit additional time to obtain the financial commitments necessary to proceed with further negotiations. The protest was tentatively settled when SCPRT agreed to provide Sanctuary Pointe additional time to produce the mandatory financial commitments, subject to approval by the CPO. This is the agreement that has been submitted for approval. Exhibit 1.

APPROVAL OF SETTLEMENT

This is an unusual case with respect to both the property involved, including the number of approval stages required, and with regard to the specific solution offered in response to the solicitation. Under ordinary circumstances it is unlikely that a proposed settlement such as this would be approved. However, considering the state of the economy; the current drought conditions at Lake Hartwell; that no other offerors or interested parties will be affected; and the nature of the project and the offer, the proposed settlement to provide Sanctuary Pointe an additional opportunity to establish its ability to assure the financial viability of the project it has proposed at Lake Hartwell will be approved. Therefore, in accordance with the authority granted by the *S.C.Code Ann.* § 11-35-4210(3), the settlement agreement between the parties dated December 18, 2008 is approved.



Voight Shealy
Chief Procurement Officer

January 9, 2009
Columbia, S.C.

STATE OF SOUTH CAROLINA)
)
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COUNTY OF RICHLAND)

BEFORE THE CHIEF PROCUREMENT
OFFICER FOR GOODS AND SERVICES

In the Matter of Protest of:

Case No. (2008-140)

Sanctuary Pointe, LLC

State Procurement Office's
Settlement Agreement between
the parties

Materials Management Office
RFP No. 08-S7648
Design, Construct, Finance and
Operate Facilities on Lake Hartwell
For South Carolina Department of
Parks, Recreation & Tourism

The undersigned hereby agree as follows:

1. The State Procurement Office will withdraw the Non-Responsibility Determination dated October 6, 2008,
2. The State Procurement Office will withdraw the "Statement of No Award" Notice dated October 6, 2008,
3. The Protest from Sanctuary Pointe dated October 15, 2008, is withdrawn with prejudice and thereby dismissed without action,
4. On or before June 30, 2009, the Sanctuary Pointe will submit the following financial information:
 - a. audited financial statements for the prior five years of all financial entities which Sanctuary Pointe proposes will be providing financial support for the project,
 - b. evidence to demonstrate financial capability to support the project such as investor's quarterly or annual reports, and
 - c. letters of commitment to the project from the financial entities supporting the project.
5. ~~8.~~ After receipt and evaluation of the financial submittals, the State will determine Sanctuary Pointe as either responsible or non-responsible.
 - a. If non-responsible, the State Procurement Office will develop a non-responsible determination and transmit that determination to Sanctuary Pointe, LLC.
 - 1). The State Procurement Office will then reinstate the "Statement of No Award."
 - b. If the State Procurement Office subsequently deems Sanctuary Pointe to be non-responsible, Sanctuary Pointe agrees not to protest or otherwise appeal that determination

and to accept the same as final and conclusive with respect to any rights or remedies which it may have with respect to the Solicitation, its proposals and its submissions in accordance with this agreement.

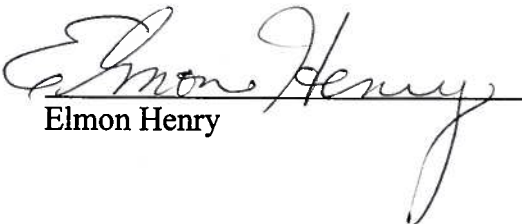
6. Until either an Intent to Award or Statement of No Award is issued, the State Procurement Office and SC PRT agree not to issue another RFP on the subject property, or have discussion, invitations or contractual arrangements with other parties that might otherwise interfere or conflict with the property or this solicitation.
7. The term, "project", as used in this Agreement shall mean Phase I improvements as described in the RFP response submitted by SP. These improvements include a hotel, conference center, golf course and main infrastructure. The financial documentation requested in this Settlement Agreement refer to these Phase I improvements. Phase II and Phase III remain a part of the overall development plan.
8. If SP is determined to be "responsible" by the State as a result of the information furnished in response to the State's responsibility determination outlined in this settlement agreement, the parties may agree to extend the acceptance period for the offer from SP up to August 31, 2009, so that the parties can continue to move forward through the required review and approval processes for the project.
9. SC PRT offers the attached letter of encouragement.

For the State Procurement Office:



John R. Stevens, CPPB, CPM

For Sanctuary Pointe, LLC:



Elmon Henry

For SC Parks, Recreation & Tourism:



BJ Willoughby
General Counsel for SCPRT

12/18/08

Date

South Carolina

Department of Parks, Recreation & Tourism

Mark Sanford
Governor

Chad Prosser
Director

December 9, 2008

Sanctuary Pointe, LLC
C/o Mr. Elmon H. Henry
Manager
129 Abaco Lane
Seneca, South Carolina 29671

Re: RFP Solicitation No. 08-S7648 to Design, Construct, Finance, and Operate Facilities on Lake Hartwell

Dear Mr. Henry:

On behalf of the State Parks Division of the South Carolina Department of Parks, Recreation and Tourism (SC PRT), I would like to commend you on the design concept presented by Sanctuary Point, LLC (SP) for the property on Lake Hartwell which is the subject of the above referenced Request for Proposal. Your concept for the property is innovative and creative, while also being respectful to the environment and the integrity of the property. In addition, the way your concepts support heritage, cultural and natural resources of South Carolina should be applauded.

If you are able to obtain the necessary financial commitment for Phase I of your proposal, I look forward to working with you in proceeding to the next step of presenting the design plan for approval to the United State Army Corps of Engineers (USACE) and the State Budget and Control Board. Thereafter, negotiations for a sub-lease of the property between SC PRT and SP may be entered.

Since the property at issue is owned by the USACE and leased to SC PRT, these approvals are necessary to the process. However, SC PRT will not entertain any discussions, invitations or contractual arrangements with other parties during the period agreed for SP to obtain necessary financial commitments for Phase I.

Good luck as you continue to pursue this matter and may your efforts culminate in the awarding of the contract to SP.

Sincerely,


Phil Gaines

Director
SC State Park Service

